

1 LINER FREEDMAN TAITELMAN + COOLEY, LLP

2 Bryan J. Freedman, Esq. (SBN: 151990)

3 Brian E. Turnauer, Esq. (SBN: 206783)

4 Tamar Yeghiayan, Esq. (SBN: 298473)

5 1801 Century Park West, 5th Floor

6 Los Angeles, CA 90067

7 Telephone: (310) 201-0005

8 Facsimile: (310) 201-0045

9 Email: bfreedman@ftllp.com

burnauer@ftllp.com

tyghaiyan@ftllp.com

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 JANE DOE,

13 Plaintiff,

14 vs.

15 THOMAS WESLEY PENTZ a/k/a
16 "DIPLO," MAD DECENT
17 PROTOCOL, LLC, MAD DECENT,
18 LLC, MAD DECENT PROPERTIES,
19 LLC, SILK CITY TOURING, INC.,
20 LOCKETT & LAZER, LLC, and
21 HOLLERTRONIX PRODUCTIONS,
22 INC.,

23 Defendants.

Case No.: 2:24-cv-05455-MRA-MAR

[Assigned to the Hon. Mónica Ramírez
Almadani]

**DEFENDANT THOMAS WESLEY
PENTZ' NOTICE OF MOTION AND
MOTION TO DISMISS COMPLAINT
PURSUANT TO FED. R. CIV. P.
12(b)(1); MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Filed concurrently with Declaration of
Brian E. Turnauer; [Proposed] Order]

Date: December 9, 2024

Time: 1:30 p.m.

Courtroom: 10B

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on December 9, 2024, at 1:30 p.m., in
3 Courtroom 10B of the above-entitled Court, located at 350 W. First Street, Los
4 Angeles, CA 90012, specially appearing defendant Thomas Wesley Pentz (“Individual
5 Defendant”) will, and does hereby, move to dismiss Plaintiff Jane Doe’s (“Plaintiff”)
6 Complaint (ECF No. 1). This Motion is made pursuant to Fed. R. Civ. P. 12(b)(1) on
7 the ground that Plaintiff filed her Complaint under a fictitious name without first
8 obtaining leave of Court in violation of Fed. R. Civ. P. 10(a).

9 This Motion is based upon this Notice, the following Memorandum of Points
10 and Authorities, the Declaration of Brian E. Turnauer, the pleadings and records
11 contained herein, and on such other argument and evidence as may be presented at the
12 hearing.

13 This Motion is made following the conference of counsel pursuant to Local
14 Rule (“L.R.”) 7-3 which took place on August 22, October 17 and October 28, 2024.
15 (See Declaration of Brian E. Turnauer [“Turnauer Decl.”] ¶ 2-4.) Counsel met and
16 conferred as soon as reasonably practical for all relevant parties. (*Id.* at ¶5.)
17
18

19 Dated: October 30, 2024 LINER FREEDMAN TAITELMAN + COOLEY, LLP

20 By: Brian E. Turnauer
21 Bryan J. Freedman
22 Brian E. Turnauer
23 Tamar Yeghiayan
24 Attorneys for Defendants
25
26
27
28

1 **I. INTRODUCTION**

2 Plaintiff Jane Doe’s (“**Plaintiff**”) Complaint is facially defective. Though
3 she filed suit more than four (4) months ago, Plaintiff has failed to seek leave of this
4 Court to litigate pseudonymously. As of this filing, and contrary to Plaintiff’s prior
5 misrepresentations to the Court, Defendant Thomas Wesley Pentz (“**Individual**
6 **Defendant**”) is unaware of the identity of his accuser and, therefore, lacks any ability
7 to substantively respond to Plaintiff’s unverified allegations. Indeed, Individual
8 Defendant cannot adequately confront his accuser without knowing her identity.
9 More significantly, Plaintiff’s inaction and persistent refusal to reveal her identity as
10 part of this litigation has deprived this Court of subject matter jurisdiction. On this
11 basis, dismissal is proper pursuant to Fed. R. Civ. P. 12(b)(1). Accordingly,
12 Individual Defendant’s Motion should be granted.

13 **II. RELEVANT ALLEGATIONS**

14 Plaintiff files suit “for damages and other relief arising out of Defendants’
15 violations of federal statute 15 U.S.C. § 6851(b)(1)(A), and related state law claims.”
16 (Compl. ¶ 1.)

17 **III. LEGAL STANDARD**

18 Fed. R. Civ. P. 12(b)(1) provides for dismissal of an action for “lack of subject
19 matter jurisdiction.” *See* Fed. R. Civ. P. 12(b)(1). Dismissal pursuant to Fed. R. Civ.
20 P. 12(b)(1) is appropriate when either the complaint or evidence extrinsic to the
21 complaint demonstrates that the court lacks subject matter jurisdiction over the
22 action. *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987). A party seeking
23 dismissal for lack of subject matter jurisdiction may bring a facial challenge or a
24 factual challenge. *See White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). Plaintiff
25 has the burden of establishing jurisdiction. *See Kokkonen v. Guardian Life Ins. Co.*,
26 511 U.S. 375, 377 (1994).

27 ///

28 ///

1 **IV. ARGUMENT**

2 **A. The Complaint Should Be Dismissed for Lack of Subject Matter**
3 **Jurisdiction Because Plaintiff Has Failed to Seek Leave to Proceed**
4 **Under Pseudonym**

5 Plaintiff's Complaint must be dismissed for lack of subject matter jurisdiction
6 on the ground that Plaintiff has failed to seek leave of Court to proceed
7 pseudonymously. Fed. R. Civ. P. 10(a) provides, in relevant part, that "the complaint
8 must name all the parties" "The normal presumption in litigation is that parties
9 must use their real names." *Doe v. Kamehameha Sch./Bernice Pauahi Bishop Est.*,
10 596 F.3d 1036, 1042 (9th Cir. 2010). "This presumption is loosely related to the
11 public's right to open courts and the right of private individuals to confront their
12 accusers. *Id.* at 1042 (internal citations omitted). Indeed, a plaintiff's "use of [a]
13 fictitious name[]" runs afoul of the public's common law right of access to judicial
14 proceedings . . . and Rule 10(a)'s command that the title of every complaint include
15 the names of all the parties" *Does I thru XXIII v. Advanced Textile Corp.*, 214
16 F.3d 1058, 1067 (9th Cir. 2000) (internal citations and quotation marks omitted).

17 To this end, "[a]bsent permission by the district court to proceed
18 anonymously, and under such other conditions as the court may impose (such as
19 requiring disclosure of their true identity under seal), the federal courts lack
20 jurisdiction over the unnamed parties, as a case has not been commenced with
21 respect to them." *M.A.C. v. Gildner*, 853 F. App'x 207, 210 (10th Cir. 2021) (citing
22 *Nat'l Commodity & Barter Ass'n, Nat'l Commodity Exch. v. Gibbs*, 886 F.2d 1240,
23 1245 (10th Cir. 1989); *see also John v. Cnty. of Sacramento*, No.
24 216CV1640JAMDBPS, 2018 WL 558767, at *1 (E.D. Cal. Jan. 24, 2018) ("When
25 a party wishes to file a case anonymously or under a pseudonym, it must first petition
26 the district court for permission to do so").

27 Plaintiff has not sought permission from this Court to proceed anonymously,
28 and, thus, the Complaint should be dismissed.

1 **V. CONCLUSION**

2 Based on the foregoing, Individual Defendant respectfully requests that the
3 Court grant the instant Motion.

4
5
6 Dated: October 30, 2024

LINER FREEDMAN TAITELMAN + COOLEY, LLP

7 By: Brian E. Turnauer

8 Bryan J. Freedman

9 Brian E. Turnauer

10 Tamar Yeghiayan

11 Attorneys for Defendants
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28